

NATIONAL LABOR RELATIONS BOARD

Region 32

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August 3, 2007

Mr. Gabriel S. Levine, Esq.
Scherer Smith & Kenny
140 Geary Street, Seventh Floor
San Francisco, CA 94108

Re: Farmer Joe's Marketplace
Cases 32-RM-805 and 32-RM-806

Dear Mr. Levine:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, as amended, has been carefully investigated and considered.

Decision to dismiss: Based on that investigation, I have concluded that further proceedings are not warranted.

In support of its petitions in the above-captioned matters, the Employer, whose employees are currently not represented by any labor organization, claims that United Food and Commercial Workers Union, Local 5, has engaged in handbilling and several rallies at the Employer's two stores, advocating a consumer boycott. At the same time according to the Employer, Local 5 has sought that the Employer sign a neutrality agreement that includes a provision for a card check to determine if Local 5 represents a majority of its employees. The Employer further asserts that statements contained in some of the handbills distributed by Local 5, such as "the majority of workers...signed union authorization cards..." and "Workers at Farmer Joe's want a union," demonstrate Local 5's demand for recognition.

Although Local 5's actions appear to be part of its attempt to organize the Employer's employees, there is no evidence that it has ever demanded that the Employer recognize it as the majority representative of its employees. In *New Otani Hotel and Garden*, 331 NLRB 1078 (2000), the Board held that even though the union engaged in picketing and a boycott of the hotel while repeatedly requesting that the employer sign a neutrality/card check agreement, those actions did not evince a present demand for recognition. In so holding, the Board stated: "[t]he mere fact that the union is engaged in

activities which it hopes will enable it *eventually* to obtain recognition by the employer is not evidence of a present demand for recognition such as would support the processing of an employer petition.” The fact that the Union’s attempts to obtain a neutrality card check agreement may have occurred in the context of Union representations that a majority of workers had signed authorization cards and wanted a union does not warrant a different result, for the Board addressed essentially the same circumstances in *Rapera, Inc.*, 333 NLRB 1287 (2001), wherein the dismissal of the Employer’s election petition was affirmed. As the facts in the instant cases are virtually identical to those in the cited cases, the evidence proffered by the Employer in support of its petitions likewise does not raise questions concerning representation warranting the holding of an election in either matter. Accordingly, the petitions are hereby dismissed.

Your Right to Obtain a Review of Dismissal Action: Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing an appeal with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-00001. A copy of such appeal must be served upon each of the parties to the proceeding, including the undersigned.

Request of Review Due Date: The request for review must be received by the Executive Secretary for the Board by the close of business at 5:00 p.m. EDT, on August 14, 2007. However, if you mail the request for review, it will be considered timely if it is postmarked no later than the day before the due date. Request for review may **not** be filed by facsimile.

An appeal also may be filed electronically by using the e-filing system on the Agency’s Website. In order to file an appeal electronically, please go to the Agency’s Website at www.nlr.gov, under “E-GOV.” Select “E-filing” and then click on “File an Appeal or Other Document” under the heading “General Counsel’s Office of Appeals.” The Website will contain detailed instructions on how to file an appeal electronically.

Extension of Time to File Request for Review: Upon good cause, the Board may grant special permission for a longer period within which to file a request for review. If you request an extension of time with the Executive Secretary in Washington, you must send a copy of your request to the other parties to this proceeding and to me.

Request of Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension

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of time must include a statement that a copy has been served on the other parties this proceeding and on me and that service has been accomplished in the same or faster manner as that used to serve the Board.

Very truly yours,

/s/ Alan B. Reichard

Alan B. Reichard
Regional Director

cc:

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